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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

MARCUS CRAWLEY,

Plaintiff and Appellant,

v.

CITY OF OAKLAND,

Defendants and Respondents.

A154348

(Alameda County
Super. Ct. No. RG17848353)

Petitioner and appellant Marcus Crawley seeks to invalidate Measure KK, a \$600 million infrastructure bond passed by the City of Oakland (the City) voters in November 2016. Crawley contends the ballot materials for Measure KK violated Article XIII C of the California Constitution because neither the ballot label nor the title and summary statement provided in the voter pamphlet stated the measure would impose a tax. Crawley also asserts the City's compliance with Election Code sections 9401 and 9404 does not save the measure because those provisions conflict with Article XIII C. His claims are unsupported by the law. We affirm the dismissal with prejudice entered after the trial court sustained demurrers to Crawley's petition for writ of administrative mandamus.

BACKGROUND

I. Measure KK

In November 2016 Oakland voters passed Measure KK, which authorizes the City to issue up to \$600 million in bonds to fund affordable housing and various improvements to public facilities, streets and sidewalks. The "ballot title and summary of

Bond Measure KK” in the voter information pamphlet stated the measure “would allow the City to borrow up to \$600 million by issuing general obligation bonds. The bonds would be repaid with revenue from an ‘ad valorem’ property tax. ‘Ad valorem’ means according to the value of the property. The City would impose a tax based on the value of real property and improvements within the City to pay the principal interest on the bonds.”

The “City Attorney’s Impartial Analysis of Bond Measure KK,” also provided in the voter pamphlet, explained that “[a]n ad valorem tax based on the value of the real property and improvements would be levied on all taxable property within the City. When the bonds are repaid, the annual tax will terminate. [¶] . . . [¶] The Tax Rate Statement, included in the ballot materials, reflects the City’s current estimate of the additional ad valorem property tax levy that would be required to repay the bonds. The Tax Rate Statement is an estimate based on currently available data and projections. The actual tax levied could be more or less than the City’s estimate.”

The voter information pamphlet included the City Auditor’s impartial financial analysis. The auditor’s estimate of Measure KK’s financial impact was based on the assumption the bonds would be issued in five series within 10 years. Principal and interest would be paid from annual property tax levies. Beginning with the projected issue of \$200 million in the first series of bonds, the tax on a single-family home would increase approximately \$23.55 per \$100,000 of assessed value. Based on the \$434,028 average assessed value of a single-family residence in 2015, Measure KK would increase the annual property tax on such a property by approximately \$102.21 after the first series of bonds and by \$343.40 after the final projected series. However, “[t]he actual tax rates and the years in which they will apply may vary from estimates due to the timing of bond sales, the amount of bonds sold, market interest rates at the time of each sale, and actual assessed valuations over the repayment term of the bonds. Additionally, without limitation as to rate or amount, the City Council may levy and collect additional tax sufficient to pay debt service on the bonds in any fiscal year.”

The City Administrator’s “Tax Rate Statement on Bond Measure KK” in the voter pamphlet stated: “1. The best estimate of the tax rate that would be required to be levied to fund this bond issue during the first fiscal year after the sale of the first series of bonds, based on estimated assessed valuations available at the time of filing of this statement, is 2.35 cents average per \$100 (\$23.55 average per \$100,000) of assessed valuation in fiscal year 2017-18. . . . [¶] 2. The best estimate of the tax rate that would be required to be levied to fund this bond issue during the first fiscal year after the sale of the last series of bonds, based on estimated assessed valuations available at the time of filing of this statement, is 7.66 average cents per \$100 (\$76.56 average per \$100,000) of assessed valuation in fiscal year 2026-2027. [¶] 3. The best estimate of the highest tax rate that would be required to be levied to fund this bond issue, based on estimated assessed valuations available at the time of filing of this statement, is 7.91 cents per \$100 (\$79.12 per \$100,000) of assessed valuation in fiscal year 2033-2034. [¶] 4. The best estimate of total debt service, including principal and interest that would be required to be repaid if all the bonds are issued and sold is \$1,179,640,700. This estimate is based on the assumption that all of the authorized bonds will be issued within 10 years after the first bond issuance in 2017. This estimate assumes that each series of bonds has a 30 year term.”

Measure KK passed with an 82.1 percent affirmative vote.

II. The Petition for Writ of Administrative Mandamus

In February 2017 Crawley filed a petition for writ of mandate naming the City and its mayor, city attorney and city administrator as defendants¹ and the California Attorney General as a real party in interest. Of eight causes of action asserted in the petition, only the first and third are at issue in this appeal. In the first cause of action, Crawley alleged Measure KK is unconstitutional because the “ ‘Ballot Label’ and ‘Ballot Title’ ” identified only the \$600 million principal amount of the bond and “made no mention of the related property tax, the KK Bond’s finance costs or total debt service. Measure KK

¹ For clarity and simplicity, we will refer to all defendants jointly as the City.

permitted the voters an opportunity to vote on the \$600 million KK Bond but not the \$1,179,640,700 [approximately \$1.2 billion] tax.” The petition alleged that “[t]he Measure KK Bond was not the same as the tax because the amount of the Bond was only half the amount of the related property tax” and “the one actual statement of tax cost (\$1,179,640,700/ approximately \$1.2 billion)” was “buried . . . in a field of other numbers in the ‘Tax Rate Statement,’ where the voters were least likely to read it.”

The third cause of action alleged that sections 9401 and 9404 of the Elections Code² are invalid because they conflict with the state constitution by immunizing from legal challenge bond measures that fail to comply with property owners’ Article XIII C right to vote on “the actual property tax to be imposed.”

The Attorney General demurred to all causes of action. The City demurred to all causes of action but the third. As relevant here, the trial court sustained the demurrers to the first and third causes of action without leave to amend. Crawley amended the petition and only one cause of action survived the next round of motion practice. The entire action was dismissed with prejudice after the surviving cause of action settled. Crawley filed this timely appeal.

DISCUSSION

I. Standard of Review

On appeal from a judgment dismissing an action after a demurrer is sustained without leave to amend, “our standard of review is clear: ‘ “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.” [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial

² Further statutory citations are to the Elections Code.

court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.’ ” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

II. First Cause of Action

Article XIII C, section 2, subdivision (d) of the California Constitution provides that “[n]otwithstanding any other provision of this Constitution [¶] . . . [¶] [n]o local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.”³ Crawley’s first cause of action alleged that Measure KK violated the Constitution because neither the ballot card nor the “Title & Summary” statement” printed on the ballot and in the voter information pamphlet stated the measure would impose a tax. The court correctly rejected the contention.

The summary description of Measure KK printed on the ballot card and repeated at the beginning of the information about the measure in the voter pamphlet stated as follows: “To improve public safety and invest in neighborhoods throughout Oakland by re-paving streets to remove potholes, rebuilding cracked and deteriorating sidewalks, funding bicycle and pedestrian safety improvements, funding affordable housing for Oaklanders, and providing funds for facility improvements, such as, neighborhood recreation centers, playgrounds, and libraries, shall the City of Oakland issue \$600 million in bonds, subject to independent citizen oversight and regular audits?” So, to the extent Crawley asserts *this summary statement* “did not mention that Measure KK would impose a tax,” he is correct. But that does not answer whether the ballot materials complied with Article XIII C. They did.

³ In full, it states “No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.”

Article XIII C, section 2, subdivision (d) requires that special taxes must be submitted to the electorate for approval by a two-thirds vote. The taxes to be imposed as a result of Measure KK were plainly disclosed in the bond measure summary, the city attorney's analysis, the city auditor's analysis, and the tax rate statement in the voter information pamphlet. Indeed, as the City observes, "[l]iterally every page of the ballot materials. . . contain[s] references to Measure KK's tax, tax rate, or property tax, and the proposed Measure was included in the ballot materials." The conclusion is inescapable that taxes associated with Measure KK were appropriately submitted to the electorate.

Crawley cites (and we have found) no authority that supports his claim the City was constitutionally required to explicitly state that Measure KK would impose a tax and disclose the total debt service in the ballot summary and ballot label. Nor does he or could he plausibly claim the information provided to the voters in the analyses by the city attorney, the city auditor and the city administrator was incomplete or misleading.⁴

The petition alleged the City "buried" the amount of the total debt service in the auditor's tax rate statement, but that allegation failed to raise a plausible due process claim. "Determination of how much process is due in a local, direct decisionmaking context—where the complained-of irregularities consist of omissions, inaccuracies or misleading statements in the ballot materials—will depend on whether the materials, in light of other circumstances of the election, were so inaccurate or misleading as to prevent the voters from making informed choices." (*Horwath v. City of east Palo Alto* (1989) 212 Cal.App.3d 766, 777; see *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 124-126.) In this case, the \$1.2 billion estimate for the maximum potential debt service was disclosed in the Tax Rate Statement. Voters reading the ballot materials would readily locate that figure. "An impartial analysis will pass muster if it describes the measure in 'general terms' giving its 'key components.' [Citation.] . . .

⁴ On appeal, Crawley disavows any claim that the ballot materials were misleading and instead relies solely on his contention that the ballot card and summary violated Article XIII C. Although we could deem the issue forfeited, we will briefly address it to put to rest any suggestion that the petition stated a viable due process claim under this theory.

[A]ll reasonable doubt should be resolved in favor of upholding the analysis.” (*People ex rel. Kerr v. County of Orange* (2003) 106 Cal.App.4th 914, 936 (*Kerr*); *Horneff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814, 820.) If reasonable minds may differ on the sufficiency of a ballot analysis or summary of a measure submitted to the voters, “ ‘it should be held sufficient.’ ” (*Kerr, supra*, 106 Cal.App.4th at p. 936; *Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 96.) Applying these standards, the ballot information provided to Oakland’s voters was sufficient.

The demurrers to the first cause of action were properly sustained without leave to amend.

III. Third Cause of Action

The third cause of action challenged Elections Code sections 9401 and 9404 on the ground they conflict with Article XIII C, section 2, subdivision (d). This cause of action, like the first cause of action, is premised on Crawley’s view that Article XIII C, section 2, subdivision (d) required the City to expressly state on the ballot label and summary that Measure KK would impose a tax. It is likewise unmeritorious.

Sections 9401 through 9404 require local jurisdictions to provide certain information to voters about proposed bond measures. No later than 88 days before the election, local officials must mail to the voters a statement setting forth the “best estimate from official sources” of (1) the average and highest tax rates that would be required to be levied to fund the bond issue, and (2) the total debt service if all the bonds authorized by the measure were issued and sold. (§ 9401, subs. (a)(1)-(3).) Section 9402 requires that the tax rate data specified in section 9401 must be included in any official voter materials prepared, sponsored or distributed by the jurisdiction proposing a bond issue. Section 9404 provides that “the essence of compliance with this chapter is good faith in presenting to voters the most accurate available information for their use in effecting comparisons and exercising judgment in casting their ballots.”⁵

⁵ “[T]his chapter” means Chapter 5 of Division 9 of the Elections Code. Chapter 5 addresses requirements for “all bond issues proposed by a county, city and county, city, district or other political subdivision . . . , the security for which constitutes a lien on the

Crawley contends section 9404 “conflicts with Article 13C because it claims to provide the ‘most accurate (tax) information’ to the voters even when an agency fails to include *any* tax information on the ballot card.” He asserts Measure KK exemplifies this alleged conflict because the City “failed to include *any* tax information for the electorate on the ballot card, but Election Code § 9404 declares that the agency has complied with the essence of ‘good faith in presenting to voters the most accurate available information.’ ” As we explained in addressing the first cause of action, nothing in article XIII C requires that the tax rate or total debt service must be stated on the ballot label. As the trial court correctly found, the constitutional provision “is a requirement that there be a vote and [sections 9401 through 9404] concern[] requirements for disclosures related to a vote. Assuming that they concerned the same subject matter, there is no facial conflict – the Election Code states requirements that the legislature decided were reasonable for permitting an informed vote.”

“A statute is presumed to be constitutional and the burden is on the challenger to show otherwise. [¶] . . . ‘Legislatures are presumed to have acted constitutionally. [Citation.] [Consequently,] [s]tatutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.’ ” (*California Taxpayers Assn. v. Franchise Tax Bd.* (2010) 190 Cal.App.4th 1139, 1146.) No conflict and no unconstitutionality appear here. The court properly sustained the demurrer to the third cause of action without leave to amend.

property . . . within the jurisdiction and the proposal for which is required to be submitted to the voters for approval.” (§ 9400.)

DISPOSITION

The order of dismissal is affirmed.

Siggins, P.J.

WE CONCUR:

Fujisaki, J.

Wiseman, J.*

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.